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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/561,932	05/05/2006	Ian John Smith	HGF7	3200
6980 7590 01/23/2009 TROUTMAN SANDERS LLP BANK OF AMERICA PLAZA 600 PEACHTREE STREET, N.E. SUITE 5200 ATLANTA, GA 30308-2216				
EXAMINER				
BENVENUTI, MATTHEW GEORGE				
ART UNIT		PAPER NUMBER		
3782				
MAIL DATE		DELIVERY MODE		
01/23/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/561,932

Applicant(s)

SMITH ET AL.

Examiner

Matt Benvenuti

Art Unit

3782

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-41 is/are pending in the application.
- 4a) Of the above claim(s) 33 and 34 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-32 and 35-41 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 December 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB08)
- Paper No(s)/Mail Date IDS (5/5/2006)
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-32 and 35-41, drawn to a plastic bag.

Group II, claim(s) 33-34, drawn to a method of use of a plastic bag.

2. The inventions listed as Groups I and II do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features. The special technical feature is the plastic bag of Claim 1, which is known in the art as discussed in regards to Claim 1 below.

3. During a telephone conversation with Ryan Schneider on January 7th, 2009 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-32 and 35-41. Affirmation of this election must be made by applicant in replying to this Office action. Claims 33-34 withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Drawings

4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description:

- Reference 360, Figure 6
- Reference 322, Figures 6-8
- Reference 438, Figure 8

5. The drawings are objected to because:

- Figure 2A, reference 32 does not point to the mouth
- Figure 2A-2B, 7, and 8 do not show an open end
- Figures 7 and 8 do not show the heat weld 326A
- Figure 8, reference 326 is pointing to the base of the cover section and not the bag base

6. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be

notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

Content of Specification

- (a) Title of the Invention: See 37 CFR 1.72(a) and MPEP § 606. The title of the invention should be placed at the top of the first page of the specification unless the title is provided in an application data sheet. The title of the invention should be brief but technically accurate and descriptive, preferably from two to seven words may not contain more than 500 characters.
- (b) Cross-References to Related Applications: See 37 CFR 1.78 and MPEP § 201.11.
- (c) Statement Regarding Federally Sponsored Research and Development: See MPEP § 310.
- (d) The Names Of The Parties To A Joint Research Agreement: See 37 CFR 1.71(g).
- (e) Incorporation-By-Reference Of Material Submitted On a Compact Disc: The specification is required to include an incorporation-by-reference of electronic documents that are to become part of the permanent United States Patent and Trademark Office records in the file of a patent application. See 37 CFR 1.52(e) and MPEP § 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text were permitted as electronic documents on compact discs beginning on September 8, 2000.
- (f) Background of the Invention: See MPEP § 608.01(c). The specification should set forth the Background of the Invention in two parts:
 - (1) Field of the Invention: A statement of the field of art to which the invention pertains. This statement may include a paraphrasing of the applicable U.S. patent classification definitions of the subject matter of the claimed invention. This item may also be titled "Technical Field."

- (2) Description of the Related Art including information disclosed under 37 CFR 1.97 and 37 CFR 1.98: A description of the related art known to the applicant and including, if applicable, references to specific related art and problems involved in the prior art which are solved by the applicant's invention. This item may also be titled "Background Art."
- (g) Brief Summary of the Invention: See MPEP § 608.01(d). A brief summary or general statement of the invention as set forth in 37 CFR 1.73. The summary is separate and distinct from the abstract and is directed toward the invention rather than the disclosure as a whole. The summary may point out the advantages of the invention or how it solves problems previously existent in the prior art (and preferably indicated in the Background of the Invention). In chemical cases it should point out in general terms the utility of the invention. If possible, the nature and gist of the invention or the inventive concept should be set forth. Objects of the invention should be treated briefly and only to the extent that they contribute to an understanding of the invention.
- (h) Brief Description of the Several Views of the Drawing(s): See MPEP § 608.01(f). A reference to and brief description of the drawing(s) as set forth in 37 CFR 1.74.
- (i) Detailed Description of the Invention: See MPEP § 608.01(g). A description of the preferred embodiment(s) of the invention as required in 37 CFR 1.71. The description should be as short and specific as is necessary to describe the invention adequately and accurately. Where elements or groups of elements, compounds, and processes, which are conventional and generally widely known in the field of the invention described and their exact nature or type is not necessary for an understanding and use of the invention by a person skilled in the art, they should not be described in detail. However, where particularly complicated subject matter is involved or where the elements, compounds, or processes may not be commonly or widely known in the field, the specification should refer to another patent or readily available publication which adequately describes the subject matter.
- (j) Claim or Claims: See 37 CFR 1.75 and MPEP § 608.01(m). The claim or claims must commence on separate sheet or electronic page (37 CFR 1.52(b)(3)). Where a claim sets forth a plurality of elements or steps, each element or step of the claim should be separated by a line indentation. There may be plural indentations to further segregate subcombinations or related steps. See 37 CFR 1.75 and MPEP § 608.01(i)-(p).

- (k) Abstract of the Disclosure: See MPEP § 608.01(f). A brief narrative of the disclosure as a whole in a single paragraph of 150 words or less commencing on a separate sheet following the claims. In an international application which has entered the national stage (37 CFR 1.491(b)), the applicant need not submit an abstract commencing on a separate sheet if an abstract was published with the international application under PCT Article 21. The abstract that appears on the cover page of the pamphlet published by the International Bureau (IB) of the World Intellectual Property Organization (WIPO) is the abstract that will be used by the USPTO. See MPEP § 1893.03(e).
- (l) Sequence Listing. See 37 CFR 1.821-1.825 and MPEP §§ 2421-2431. The requirement for a sequence listing applies to all sequences disclosed in a given application, whether the sequences are claimed or not. See MPEP § 2421.02.

The specification lacks headings for the specific sections.

7. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means," "comprises" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

In line 2 of the abstract the Applicant uses the word comprises.

8. The disclosure is objected to because of the following informalities:

- Page 21, Line 31 "... the baf..." should be "...the bag..."
- Page 22, Line 12 "When accessis..." should be "When access is..."

Appropriate correction is required.

Claim Objections

9. Claim 26 is objected to because of the following informalities: Line 1, "wherein on..." should be "wherein one...". Appropriate correction is required.

Claim Rejections - 35 USC § 112

10. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

11. Claims 8-12, 19-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
12. Claim 8 recites the limitation "said separably attached areas" in Claim 1. There is insufficient antecedent basis for this limitation in the claim. For the purposes of Examination Claim 8 has been interpreted to depend on Claim 7.
13. Claim 10 recites the limitation "said first treated area" in Claim 3. There is insufficient antecedent basis for this limitation in the claim. For purposes of examination it has been interpreted to depend on Claim 4.
14. Claim 19 recites the limitation "said lengthwise extending portion" in Claim 1. There is insufficient antecedent basis for this limitation in the claim.
15. Claims 20-21 recites the limitation "said widthwise extending portion" in Claim 1. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

16. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

17. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

18. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

19. Claims 1-5, 19-24, 26, 28-32, 35-36, 38-41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Goodrich (US 3,807,626) in view of Arakawa et al (US 2004/0011677).

20. In re Claims 1, 3, 19-21, 26, 35, and 41, Goodrich, Figure 9, teaches a bag comprising a cover section (51), a bag section (55), an open end (Figure 1) the cover section arranged to enclose the bag section, a closable region (56) and in the closable region, an internal face of at least one of the respective first and second walls is attached and/or attachable to an adjacent external face of a wall of the bag section (Figures 9 and 10) by heat sealing (Goodrich, Column 4, Lines 52-59), the attachment being such that the cover section is removable without compromising the seal of the bag section (Figures 15-17).

21. Goodrich does not teach a closeable mouth defined in a wall of the bag section for access in use to the interior of the bag section. In fact Goodrich is silent as to how the inner bag opens once removed from the cover section. Arakawa et al discloses a bag with a closure in the front wall (Figure 4) with a resealable label. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the bag as taught by Goodrich by placing a closure on the front wall of the bag section as taught by Akawara et al.

22. In re Claim 2, the combination further teaches the open end of the bag section being sealed after filling by heat sealing the bag section walls together in the closable region (Goodrich, Column 4, Lines 52-59).

23. In re Claims 4 and 5, the combination discloses the heat seal closes only the bag section (55) in the area (56).

24. In re Claims 22-23, and 38-39, the combination further teaches a first closure flap (103) overlying and closing said mouth (106) including a first attached region which is

peelably attached ([0059], Lines 4-8), and a line of weakness (104) such that a portion of said first closure flap may be peeled away from said bag section wall to reveal the mouth ([0069]).

25. In re Claims 24 and 40, the combination teaches a closure flap that extends into the closeable region (Akawara et al, Figure 4).

26. In re Claims 28-31, Goodrich teaches a mouth in the outer bag to allow access to the inner bag section. Goodrich does not teach a closeable mouth. However, it would have been obvious to one of ordinary skill in the art to modify the opening in the outer bag as taught by Goodrich with the resealable label as taught by Akaware et al. Providing a resealable label on the outer bag would allow a user to place the bag section back in the outer bag for later use.

27. In re Claim 32, the resealable label includes a tab (105) for gripping when opening the cover section.

28. In re Claim 36, is a product-by-process Claim in which the combination meets the structural limitations of the Claim.

29. Claims 6, 10, and 13-18, 25, 27, and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination as applied to claim 3, 5, 24, and 36 above, and further in view of Applicant admitted prior art.

30. In re Claims 6, 10, 13-18, 25, 27, and 37, Applicant admits on Page 13, Lines 29-30 that the choice of material to achieve the desired heat seal in the closable region is within the knowledge and skill of the person skilled in the art. Additionally, Applicant

admits on Page 14, Lines 28-31, that the relative areas of printed and non-printed areas can be determined by simple experiment by person of ordinary skill in the art. Thus it would have been obvious to one of ordinary skill in the art to select materials and printed and non-printed area to achieve the seal covered by the limitations of Claims 3-6, 10, 13-18, 27, and 37.

31. Claims 6-7, and 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination as applied to Claims 1 and 10 (respectively) above, and further in view of Beer (US 6,280,085).

32. In re Claims 6-7, and 11-12, the combination teaches the claimed invention except for the first and second walls are removably heat sealed to the bag section in separably attached areas. Beer discloses a cover that is removably heat sealed around its periphery to a bag section (Column 4, Lines 34-39). It would have been obvious to one of ordinary skill in the art at the time the invention was made to removably heat seal the cover to the bag section along two sides, as taught by Beer.

33. Claims 8-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination in view of Beer as applied to claim 7 above, and further in view of Applicant admitted art. Applicant admits on Page 13, Lines 29-30 that the choice of material to achieve the desired heat seal in the closable region is within the knowledge and skill of the person skilled in the art. Additionally, Applicant admits on Page 14, Lines 28-31, that the relative areas of printed and non-printed areas can be determined by simple

experiment by person of ordinary skill in the art. Thus it would have been obvious to one of ordinary skill in the art to select materials and printed and non-printed area to achieve the seal covered by the limitations of Claims 8-9.

Conclusion

34. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

35. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matt Benvenuti whose telephone number is (571)270-5704. The examiner can normally be reached on Monday - Friday: 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on 571-272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MB

/Nathan J. Newhouse/
Supervisory Patent Examiner, Art Unit 3782